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10/601,795	06/23/2003	Morris Samelson	P-5435(DIV2)	7990

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/601,795	Applicant(s) SAMELSON ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-19-06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of IDS and remarks dated 1-19-06 is acknowledged.

Claims 1, 3-18, 20 and 21 are pending in the instant application.

The following rejection of record has been maintained, as applicable to pending claims:

Claim Objections

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim. Instant claims 5-11 and 13-16, which recite a different carrier medium, are improperly dependent on the preceding claim, whereas the generic limitation "all-natural carrier medium" is present in claim 3. It is suggested to applicants to correct the instant claims to depend from claim 3. Similarly, claims 13-16 recite a specific essential oil and should be dependent upon claim 12, instead of the preceding claims.

Claim Rejections - 35 USC § 112

Claims 1, 3-18, 20 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claims recite the new limitation "anhydrous", which constitute new matter that is not supported by the instant specification. A careful review of the instant disclosure does not reveal any support for

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the claimed anhydrous composition and thus does not comply with the written description requirement.

Claim Rejections - 35 USC § 103

Claims 1-3 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of US 6,458,388 to Genis or Genis in view of KR.

KR teach a cosmetic composition comprising a large quantity of salt, about 15%-85% of Dead Sea Salt or bay salt or bamboo salt, having a particle size in the range of 0.1mm to 5.0 mm (abstract). The particle size distribution on page 13 of the instant specification states that the granularity of the instant Dead Sea particles is even ultra fine than the known particles, greater than 90%, which pass than 1.7mm to 4mm. Thus, it is understood from the specification that the particles of instant invention are finer than the 1.7 mm and KR teaches particles that are as small as 0.1 mm and thus meet the claimed particle size. With respect to the limitation "anhydrous", see the new matter rejection. KR does not teach the steps of heating and cooling. KR teaches the composition as a cosmetic scrub.

Genis teaches cosmetic scrub composition comprising Dead Sea salt granules, having a particle size of 0.1-0.3 mm, which is less than the claimed size (col. 2, lines 28-60). With respect to subjecting the precursors to consecutive heating and cooling cycles as claimed, Genis teaches the steps of mixing Dead Sea salt with an emulsifier at a temperature higher than room temperature, homogenizing the mixture and cooling; and subjecting the mixture to another heating and cooling cycle (col. 3, lines 40-60).

With respect to the limitation that the particles do not rapidly settle out of carrier medium, Genis discloses Dead Sea particles of same particle size and in a cosmetic medium containing vitamin E, which is also described in the instant specification (page 19). Accordingly, absent showing evidence to the contrary, it is implicit that the particles of Genis or KR do not settle out of carrier medium. Instant claims recite at least 50% processed, but does not state if 50% is pertaining to the concentration of Dead Sea salts in the composition.

Genis fails to teach the exact claimed temperatures for heating, cooling, cooling the process vessel after heating step to the claimed temperature and the rate of cooling as claimed. However, Genis teaches the general process of subjecting the components (precursors) of the cosmetic composition containing Dead Sea salts. In particular, Genis teaches heating at a temperature of 10-20 degrees C (approximately between 75 to 80 degrees C) higher than room temperature (which ranges between 18 to 32 C) and cooling to slowly to a temperature of 45 degrees C (col. 4, lines 4-14). Instant claims recite heating to 65 degrees C and cooling to 42 degrees C, which is not significantly different from the temperatures taught by Genis.

Both KR and Genis teach compositions containing Dead Sea salts for the achieving the same cosmetic effect i.e., as a scrub for massaging skin. KR suggests concentration of salts as high as 85% by total weight of the composition so as to enhance massage and blood flow promoting effect. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use a higher concentration of Dead Sea salts in the composition of Genis because KR

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suggests an enhanced blood-flow promoting and skin moisturizing/massaging effect.

Alternatively, it would have been obvious to one of an ordinary skill in the art at the time of the instant invention to employ the process steps of Genis in preparing the composition of KR, and further to optimize the temperature range or exact temperatures of heating and cooling cycles, such that a homogenized cream containing Dead Sea salt granules, which is stable upon storage and still achieve the desired skin scrubbing effect (col. 5, lines 40-55).

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of (Genis), as applied to claims 1-3 and 17-21 in view of EP 1074245 (EP '245).

Genis as well as KR fail to teach the specific essential oils of instant claims.

EP '245 teaches cosmetic composition containing Dead Sea mineral salts that are granular in nature, for the treatment of skin itching caused by Psoriasis or for skin exfoliating or scrubbing. The composition of EP '245 contains 5% Dead Sea salts and other herbs and the instant claimed aromatic essences such as lavender, chamomile, calendula etc., for skin relaxing or other therapeutic effects (Table on page 9 continued on page 10). EP '245 also teaches emollients and waxes such as vegetable oils, lipo wax, etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043).

Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include cosmetic aroma agents such as chamomile, lavender

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and calendula in the cosmetic composition containing Dead sea salts of Genis or KR, because EP '245 suggests that the composition contains granular Dead Sea mineral salts in an amount sufficient to improve properties of the cosmetic and cleansing composition (Paragraphs 0019, 0020 & 1:10 ratio, Para 0059), to provide smoothness, decrease lumpiness, itchiness or edema of the skin and that the aroma agents help in protecting skin from damage due to itching, flaking, eczema etc., impart a pleasant and tactile feeling (emollients); improve circulation and relaxation (herbs and aroma agents). Further, The process of preparing the composition (page 7) of EP '245 involves a homogenous mixing, which is the same as instant, because instant application also describes the use of ultra fine Dead Sea salts for a homogenous mixing so as to maintain uniformity of the solid suspension. Instant application also describes the same application of Dead Sea salts as that of EP '245. Thus, the expected result is to achieve an effective treatment for reducing itching and increasing smoothness of skin with Dead Sea salts and improved relaxation with the aromatic agents.

Claims 4- 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of (Genis), as applied to claims 1-3 and 17-21 in view of 5,997,889 to Durr et al (Durr).

KR and Genis fail to teach the claimed oils. Genis teaches oils such as sunflower oil and KR teaches mineral oil.

'889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for

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moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of Genis (or KR) containing Dead sea salts because '889 teaches the ingredients for moisturizing and providing relief to psoriatic or itchy skin conditions. Therefore, a skilled artisan would have expected to achieve a more effective composition for treating psoriasis with a composition containing Dead Sea salts, emollients such as jojoba oils etc. While none of the above references particularly teach the claimed oils i.e., coconut oil, Palm oil, olive, soybean oil etc., '889 suggest incorporating oils in general for providing skin conditioning benefits and provide relief from eczema, dermatitis, psoriasis etc. Accordingly, absent showing criticality it would have been within the scope of a skilled artisan to choose an appropriate oil in the composition of Genis containing Dead Sea salts so as to provide the desired emolliency.

Response to Arguments

Applicant's arguments filed 1-19-06 have been fully considered but they are not persuasive.

Claim objection: Applicants argue that claims 5-11 are proper because a series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim, which in turn, refers to another preceding claim. It is argued that contrary to the Examiner's contention that claims recite a different carrier medium, claims 5-11 merely give additional constituents of the "all-natural carrier medium comprises oil". Applicants explain that claim 11 should contain the specific oils of claims 4-10, in the all-natural carrier medium. Applicants also provide the same explanation for the objection of claims 13-16. However, if applicants' intend to claim a combination of oils in each of the dependent claims, it is suggested that each of the claims 5-11 recite the term "further comprising", which allows an additional oil to be present in the all-natural carrier medium.

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement:

Applicants argue that the specification clearly demonstrates that there are several references in support of the claimed composition being anhydrous, as evidenced by the fact that there is no step in the process or composition in which water is added. Applicants state that the following instances support the claimed term "anhydrous": employing filters to remove moisture (page 14), a cover to prevent moisture from mixing with the ultra fine minerals, the description of hygroscopic nature of Dead Sea salts minerals and the ultra fine minerals, the entire process occurring in a modified room atmosphere with a temperature no higher than 78 F with cool, dry positive pressure, and passing the air used in the process to pass through a water trap,

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composition containing dead sea salts and a mixture of oils. Applicants also argue that their invention is distinguished from that of the prior art teachings (Genis) in that the present composition comprises an oil-based carrier medium (also recognized by the examiner in the office action dated 12-29-04) .

Applicants arguments are not persuasive because while it is true that at the above instances, the instant specification calls for a trap, the specification does not state that 100% trap and removal of moisture. While the specification states hygroscopic nature of the ultra fine minerals etc., the specification nowhere states that the resulting composition is anhydrous. Additionally, the term "hygroscopic" is defined as a compound that can absorb water vapor from atmosphere. According to this definition, the compound need not be completely anhydrous to be able to absorb vapor. Further, instant composition recites the phrase "comprising" that allows for the presence of water, accordingly the argument that the composition has an oil-based carrier medium is not persuasive.

Claims 1-3 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of US 6,458,388 to Genis or Genis in view of KR.

Applicants argue that examiner bears the initial burden of establishing a prima facie case of obviousness. It is argued that KR does not give any indication as to which one of the three salts (Dead Sea, bamboo or bay salt) is used in a given particle size (0.01 mm to 5.0 mm) and that it is possible to have a particle size of 0.01 mm for bamboo or bay salt and that if Dead Sea salts are present, the particle size used would necessarily be in the range of either 90% less than 1.7mm or greater than 90% between

1.7 mm-4.0 mm size granularity, as those particle sizes of the two standard grades of Dead Sea salts are commercially available. However, applicants' arguments are not persuasive because applicants have not provided any evidence that KR teaches the particle sizes only in those percentages, and why one of an ordinary skill in the art would have employed any particle size within the range of particle sizes taught (0.01 mm-5.0 mm). Applicants' argue that without the instant invention, KR cannot achieve 100% particles of less than 1.0mm and that KR also fails to teach at least 50% by weight of the total composition of the "processed" Dead Sea salts, in an all-continuous carrier medium. Applicants have not provided any unexpected results comparing the processed salts of the instant with that of KR and absent such, given the teaching of the particle size range and the percentage range of sea salts (Dead, bamboo or bay) of 15% to 85% (by KR) and for the same cosmetic application, choosing the amounts and particles sizes of the appropriate sera salts so as to achieve the desired cosmetic effect would have been within the scope of a skilled artisan. The limitation that all-natural carrier medium comprises oil, allows for other constituents such as polyol taught by KR in addition to the oily phase taught by Genis, and therefore augment that the cited prior art is non-analogous is not persuasive.

Applicants' argument that Genis does not suggest increasing the amount of Dead sea Salt in a composition containing water, is not persuasive because KR and not Genis is relied upon for the teaching the high concentrations of salts. With respect to the argument regarding "processed" Dead Sea minerals, instant processing results in ultra

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fine minerals of the particular particle size claimed and admittedly KR also teaches particle sizes that include the claimed size.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of (Genis), as applied to claims 1-3 and 17-21 in view of EP 1074245 (EP '245).

Applicants state that claim 14, which was not and presumed to be allowed in the office action dated 12-29-04, has now been rejected. However, the non-final office action dated 7-22-05 (in which claim 14 is rejected) is in response to a request for continued examination and accordingly, the present rejection of claim 14 is deemed proper. Applicants argue that the arguments presented against the rejection of independent claim 1 are applicable to claims 12-16, because the claims depend from claim 1. However, applicants' arguments have been addressed in the paragraphs above and accordingly, the rejection has been maintained.

Claims 4- 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of (Genis), as applied to claims 1-3 and 17-21 in view of 5,997,889 to Durr et al (Durr).

As applicants rightly state the rejection of claims 4-11 does not include EP 1074245 as a basis and the new rejection is based on KR 149428 (KR) in view of (Genis) and further in view of Durr. Applicants argue that their arguments in response to office action dated 8-18-04 are incorporated herein. However, the arguments are not

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persuasive because the basis of present rejection is not based on Genis in view of EP and instead is based on KR 149428 (KR) in view of (Genis) and further in view of Durr. Accordingly, the arguments are moot.

Unexpected results:

Applicants argue that the declaration does reveal unexpected results and is commensurate with the scope of the claims. It is argued that the unexpected results reveal that all of the Dead Sea salts remain in suspension, without separation. Applicants also argue that examiner gives no basis for the observation of “the feel and ability to remain in suspension is a function of soybean oil and beeswax”, even though the percentages of soybean and beeswax in experiments 5 and 4 are 9% and 3% respectively. In response to this, even though each of the experiments 6 through 10 employ 51% of Dead Sea salts, the final result of skin feel, appearance, ability to remain suspension is not the same (as seen from the results section of the experiments). Experiments 6 through 10 mainly differ from each other in the amounts of soybean oil and beeswax, whereas the amounts of other oils and waxes remain more or less same in each of the experiments. Accordingly, any difference in the end result is only a function of the amounts of soybean oil and beeswax. Applicants themselves admit that experiment 10 (with same amount of Dead Sea salts as in experiments 6-9, but with 9% soy bean oil and 3% beeswax) is “final and best for production”. With respect to the experiments 5 and 4, even though the amounts of Dead Sea salts are high, the end results show that the salts remain in suspension but with slight separation (experiment

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4, which is 50% salts and is in the claimed range) or remain in suspension, but unacceptable feel and overly thick (example 5, 55% salts, still within the claimed range). Thus, with respect to claims 4 and 5, even a claimed amount of salts do not remain in suspension without separation or if they do so, the suspension is too thick to result in an unacceptable feel. Thus, it is the position of the examiner that the results shown are not commensurate with the scope of the claims because instant claim 1 recites at least 50% of the Dead sea salts and while the results show that Dead sea salts at a concentration of 50% and 51% show an acceptable feel, excellent scent, a concentration of 55% (which still meets the claimed "at least 50%") however shows that the immediate effect on skin is not as intended, although the feel is acceptable, and also the suspension obtained is over thick with too much salts to feel.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lakshmi S Channavajjala
Examiner
Art Unit 1615

February 27, 2006


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